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No. 85-615

In The

Supreme Court of the United States

October Term, 1985

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THE STATE OF CALIFORNIA, acting by and through the Department of Transportation, et al.,

Petitioners,

vs.

NAEGELE OUTDOOR ADVERTISING COMPANY OF CALIFORNIA, etc., et al.,

Respondents.

—o—

On Petition for a Writ of Certiorari to the Supreme Court of California

—o—

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

—o—

BEST, BEST & KRIEGER
Attorneys at Law
By: RICHARD CROSS, Esq.
4200 Orange Street
Post Office Box 1028
Riverside, CA 92502
Telephone: (714) 686-1450

Attorneys for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

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STATEMENT OF THE CASE

The Morongo Band of Mission Indians is a sovereign, federally recognized Indian tribe and beneficial owner of the Morongo Reservation. *See Morongo Band of Mission Indians v. Area Director, Sacramento Office,* 7 Interior Board of Indian Appeals 299, 86 Int. Dec. 680, 681-82 (1979) (Morongo) (Appendix 1 hereto). The reservation, which lies astride a pass between the San Bernardino and San Jacinto Mountain Ranges, was created between 1876 and 1948 by a series of seven executive orders, one presidential proclamation, one federal statute and one deed. Pursuant to the Mission Indian Relief Act of 1891, 26 Stat. 712, the federal government holds the reservation in trust "for the sole use and benefit of the band or village . . . ," to be conveyed at the termination of the trust "free of all charge or incumbrance whatsoever. . . ."

The reservation's few natural resources yield little income. Its economy is depressed and many of its members are unemployed and live in poverty. Of its 32,254 acres, less than one square mile is suitable for economic development. *Morongo, supra,* 86 Int. Dec. at 681. That small area is the strip of land flanking Interstate Highway 10, which crosses the southern portion of the Morongo Reservation and is the major east-west artery for travel to and from metropolitan Southern California. *Id.*

The Band has long derived a major part of its income from outdoor advertising along I-10. *Morongo, supra,* 86 Int. Dec. at 681. In 1963 the Band's general membership delegated to the Morongo Tribal Council authority to negotiate outdoor advertising agreements. In a 1977 appraisal report, the Southern California Appraisal Office

of the Bureau of Indian Affairs (BIA) identified outdoor advertising as "the highest and best use of [the] reservation land along Interstate 10." *Morongo, supra*, 86 Int. Dec. at 681 n. 3.

In 1977 the Band solicited proposals for further outdoor advertising from several outdoor advertising businesses. *People ex rel. Dept. of Transportation v. Naegele Outdoor Advertising Co.*, 38 Cal.3d 509, 513 (1985) (Naegele). On the basis of the more favorable terms offered by the Naegele Outdoor Advertising Company of California, Inc. (Naegele) the Band negotiated a lease with Naegele. Since 25 U.S.C. § 415 and former 25 C.F.R. §131 (now codified as 25 C.F.R. § 162) required the approval of the Department of Interior for such leases, the Band and Naegele submitted the lease to the local Bureau of Indian Affairs (BIA) office for approval. That office disapproved the lease on the ground that it violated the Federal Highway Beautification Act of 1965 (Pub. L. 89-285, codified as amended at 23 U.S.C. §§ 131, 136 & 319) and the California Outdoor Advertising Act (1970 Cal. Stats., ch. 991 § 2 at 1764, codified as amended at Cal. Bus. & Prof. Code §§ 5200 *et seq.*). On March 14, 1978, the Area Director of the BIA upheld the disapproval. The Band appealed to the Commissioner of Indian Affairs, who did not act on the appeal within the 30 days required by 25 C.F.R. § 2.19(a), and the appeal was automatically referred to the Interior Board of Indian Appeals. *See* 25 C.F.R. § 2.19(b).

On December 13, 1979, the Interior Board of Indian Appeals reversed the decision of the Area Director and remanded the case to the Acting Deputy Commissioner of Indian Affairs, with instructions that the BIA "seek to effectuate a business lease for outdoor advertising between

the Morongo Band and the Naegele Company consistent with this opinion." *Morongo, supra,* 86 Int. Dec. at 692. The Board's action was that of the highest authority within the Department of the Interior and was final for the Department. *Id.*; *see* 43 C.F.R. § 4.1.

Meanwhile, in March of 1978 the Band had enacted a land use ordinance designating the Reservation land along Interstate 10 as suitable for commercial development, and on March 30, 1978, while the Band's appeal of the Area Director's decision was still pending, the Band and Naegele entered into a written agency agreement. Pursuant to the agreement, Naegele installed and began operating 15 outdoor advertising signs on the Morongo Reservation.

Naegele paid the Band $250,000 for the right to operate the signs for 10 years. The Band has used this money for fire protection, improved television reception, development of new tribal enterprises, operation of the Tribal Business Committee, and development of alternative energy sources.

On July 10, 1978, the State of California Department of Transportation ("Department") filed a complaint and motion for preliminary and permanent injunction against Naegele, alleging that Naegele had commenced construction of outdoor advertising signs without first applying to the Department for a permit, that the locations of the signs did not comply with the requirements of the California Outdoor Advertising Act, and that the signs constituted a public nuisance. The complaint contained no mention of the fact that the signs were located on the reservation and owned by the Morongos, nor did it name the Morongo Band as a defendant. However, in declarations filed in support of the preliminary injunction motion the

Department acknowledged that the signs were located on the reservation.

Naegele's motion to quash service, or alternatively, for dismissal for failure to join an indispensable party, was denied on August 1, 1978. On October 26, 1981, the State filed a motion for summary judgment, and on November 24 the Riverside Superior Court entered its judgment granting the State's motion for summary judgment and (1) restraining Naegele from placing or maintaining outdoor advertising structures on the Morongo reservation and (2) ordering Naegele to dismantle and remove each advertising structure on the Reservation. The Court stayed its judgment pending appeal. Naegele appealed.

The Fourth District Court of Appeal, Division Two, consolidated the State's action with the parallel action by Desert Outdoor Advertising, Inc.[1] Because resolution of the issues being appealed would significantly affect the Morongo Band, the Court granted the Band's application for leave to file a brief *amicus curiae*.

On February 3, 1984, after all briefs had been filed and oral argument heard, Naegele filed a motion for judicial notice, by which it apprised the appellate court that on February 2, 1984, the Acting Superintendent of the Southern California Agency of the BIA had approved the Morongo-Naegele agreement, retroactive to the date of its execution on March 30, 1978. (See Appendices 2 & 3 hereto.) Undeterred, the appellate court affirmed the trial court's granting of summary judgment in both actions. Naegele filed its petition for hearing with the California

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[1] *Desert Outdoor Advertising, Inc. v. Naegele Outdoor Advertising Company of California, et al.*, No. 4 Civ. 27937.

Supreme Court on April 9, 1984. The State and Desert filed answering briefs, and the Supreme Court again allowed the Morongo Band to file an *amicus curiae* brief.

On May 2, 1985, the California Supreme Court issued its opinion in the consolidated State and Desert actions. It held (1) that whether or not Congress intended the outdoor advertising standards of the Highway Beautification Act to apply on Indian reservations, it did not intend that these standards be enforced through the assertion of state power; (2) that the Act of August 15, 1953 (Pub. L. 83-280, 67 Stat. 589 (codified at 28 U.S.C. § 1360) (Public Law 280) did not constitute a grant by Congress to California of authority to regulate outdoor advertising on Indian reservations; and (3) that California's Outdoor Advertising Act was further preempted because Congress had, by the HBA, reserved to federal authorities responsibility for enforcing the Act on federal lands and reservations, or, alternatively, because the assertion by California of its outdoor advertising laws would impose inconsistent state regulations in an area reserved for federal oversight. *Naegele, supra*, 38 Cal. 3d at 514-23.[2]

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[2] On August 3, 1984, the Ninth Circuit Court of Appeals issued its opinion in *United States ex rel. Buxbom v. Naegele Outdoor Advertising Company of California, Inc.*, 739 F.2d 473 (9th Cir. 1984), *cert. denied*, 83 L.Ed.2d 779, 105 S.Ct. 795, 53 L.S.L.W. 3484 (1985), reversing the decision below and remanding with directions to dismiss the relator's action. In *Buxbom*, Seymour Buxbom, the president of Desert Outdoor, had alleged (by a complaint filed on December 3, 1982 in the Central District of California) that the March 30, 1978 Morongo-Naegele agency agreement violated 25 U.S.C. § 81. In reversing the district court's grant of summary judgment in favor of Buxbom, the Ninth Circuit held that the BIA had authority to approve the agency agreement retroactively and that such approval precluded any judgment that the agreement between the Band and Naegele was void.

Because it had based its ruling on grounds of federal preemption, the Court expressly refrained from deciding the additional defense asserted by Naegele, to wit, that the lawsuits against Naegele should be dismissed pursuant to California Code of Civil Procedure Section 389 because the Morongo Band was a necessary party that could not be joined. *Id.* at 523 n. 12.

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ARGUMENT

1. Summary of Opposition

The State Department of Transportation's extremely brief petition is devoted to the single contention that the court below improperly failed to conduct the kind of balancing preemption test to which this Court has resorted in cases such as *New Mexico v. Mescalero Apache Tribe,* 462 U.S. 342, 76 L.Ed.2d 611, 103 S.Ct. 2378 (1983). Though the Department seems not to realize it, this argument necessarily rests on the premise that the Court below mistakenly relied on "familiar principles of pre-emption" *(Naegele, supra,* 38 Cal.3d at 522) in holding that the HBA preempted California's right (if any) to regulate on-reservation outdoor advertising.

The upshot is that the Department attacks only the third ground of the decision below, and leaves untouched the first two grounds, i.e., (1) that the HBA did not delegate authority to regulate outdoor advertising on Indian reservations and (2) that Public Law 280 did not confer such regulatory jurisdiction upon California. Thus, the Department has failed to show why the balancing preemption test should have been used rather than the more tradi-

tional preemption test used by the California Supreme Court. The Department's petition should be rejected, therefore, if only because it fails to show why the State Supreme Court was *required* to conduct the kind of specialized balancing test used in *Mescalero, supra.*

Even assuming for the sake of argument, however, that the State Supreme Court incorrectly concluded that the HBA preempted California's jurisdiction "under familiar principles of preemption," the fact remains that the Department's contention that the *Mescalero* preemption balancing test favors its position, rather than Naegele's, is wrong. The Band's and the federal government's interests decisively outweigh those of the Department.

Finally, the fact remains that the Morongo Band is and always has been an indispensable party to this action. To permit the Department to invade sovereign tribal rights by the ruse of an action against Naegele, instead of the Band, violates due process and established principles of tribal sovereignty.

2. The California Supreme Court Correctly Held That The HBA Preempted State Regulatory Jurisdiction Over On-Reservation Outdoor Advertising.

As the California Supreme Court noted in *Naegele*, this Court reaffirmed in *New Mexico v. Mescalero Apache Tribe, supra,* 462 U.S. 324, 339-43, that "'a State will certainly be without jurisdiction if its authority is pre-empted under *familiar principles* of pre-emption. . . .'" *Naegele, supra,* 38 Cal. 3d at 522 (emphasis added). The HBA, the California Court observed, "clearly represent[ed] Congress's intent to design a comprehensive scheme for the regulation of outdoor advertising adjacent to federal high-

ways throughout the United States." *Id.* It did not matter therefore, whether, as the Interior Department had concluded in *Morongo,* Congress intended to leave Indian reservation lands beyond the HBA, or whether it simply reserved to federal authorities the responsibility for enforcing the HBA's provisions upon federal lands and reservations. *Id.* Either way,

> "the assertion of state regulatory authority in this area would clearly conflict with Congress's purposes, . . . by subjecting Indian enterprises exempt from control under the federal act to state regulation, or by imposing inconsistent state regulations in an area reserved for federal oversight." *Id.*

In support of this conclusion, the State Supreme Court emphasized in a footnote that the Interior Department's authority to supervise the enterprise here at issue (outdoor advertising) could not be doubted, citing 25 U.S.C. § 415(a) and 25 C.F.R. § 162, and further noted that the "record amply indicate[d] that the Band's outdoor advertising enterprise [had] been encouraged and approved by the [BIA]." *Naegele, supra,* 38 Cal. 3d at 522 n. 9.

The Department has failed to articulate any reason why this conclusion should be disturbed. The nearest that it comes to broaching the question why a traditional preemption analysis is inadequate appears at page 6, where it briefly considers a token few of the interests which would have to be balanced against the State's in conducting a preemption balancing test. There the Department delivers itself of the following confused and not very helpful observation:

> "Nowhere is there a discussion or consideration of the fact that the [HBA] was designed to stop the prolifer-

> ation of billboards, that states were specifically not prohibited from further restrictions on billboards . . ., nor any indication of how the state's restrictions on billboards would frustrate the intent of Congress to reduce such proliferation." *Id.*

The first clause of the above quotation is probably a mischaracterization of the California Supreme Court's view of the HBA.[3] That, however, is of little consequence, since it and the clauses that follow do not combine to make a point that is either coherent or relevant. As previously discussed, the Department does not dispute the State Supreme Court's conclusion that the HBA did not delegate authority to regulate on-reservation outdoor advertising. We must assume, therefore, that the Department begins from the premise that Congress left the states to deal with the problem themselves, on pain of forfeiting a prescribed percentage of federal revenues. If this is so, it matters not that Congress's purpose may have been to "stop the proliferation of billboards. . . ." Whatever Congress's purpose may have been, it cannot have enlarged the inherent jurisdiction of the states unless there was some delegation of authority. But the Department does not so contend.

Similarly, of what relevance is it that the states were not prohibited from adopting more stringent standards than those requested by the HBA? Is the Department suggesting that greater weight should be given to a putative state interest because Congress did not prohibit the

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[3] *See, e.g. Naegele, supra,* 38 Cal. 3d at 522, where the State Supreme Court observed: "The [HBA] clearly represents Congress's intent to design a comprehensive scheme for the regulation of outdoor advertising adjacent to federal highways throughout the United States."

states from going beyond the minimum standards set forth in the HBA? Again, this cannot be a basis for finding an implied delegation of federal authority over Indian reservations. And in any case, the Department is estopped from claiming that this fact increases the weight of *its* claimed interest—since California's outdoor advertising act does not establish standards more stringent than those of the HBA.

The California Supreme Court's preemption (third) holding is not diminished by any of the Department's arguments.

3. Even If The Preemption Balancing Test Is Used, The Balance Tips Decidedly Against The Department.

The Department contends that California has independent authority to regulate the Morongo signs pursuant to its outdoor advertising act. Analysis of this contention must begin from the established premise that "Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory." *New Mexico v. Mescalero Apache Tribe, supra,* 76 L.Ed.2d at 619, *quoting, White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 142, 65 L.Ed.2d 665, 100 S.Ct. 2578 (1980). The retained sovereignty of tribes comprises "any aspect of their historical sovereignty 'not inconsistent with the overriding interests of the National Government,'" including in particular "an 'historic immunity from state and local control.'" *New Mexico v. Mescalero Apache Tribe, supra,* 76 L.Ed.2d at 619, *quoting, Washington v. Confederated Tribes,* 447 U.S. 134, 153, 65 L.Ed.2d 10, 100

S.Ct. 2069 (1980) and *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152, 36 L.Ed.2d 114, 93 S.Ct. 1267 (1973). It also includes the power to regulate tribal internal and social relations and the "power to exclude non-members entirely or to condition the presence on the reservation. . . ." *New Mexico v. Mescalero Apache Tribe, supra*, 76 L.Ed.2d at 619. The power to regulate the use of reservation land is a fundamental attribute of the historical sovereignty of Indian tribes. *Id.*, 76 L.Ed.2d at 621, 622; *Cardin v. De La Cruz*, 671 F.2d 363, 365-66 (9th Cir.), *cert. denied*, 459 U.S. 967, 74 L.Ed.2d 277, 103 S.Ct. 293 (1982); *Knight v. Shoshone & Arapahoe Indian Tribes*, 670 F.2d 900, 903-4 (10th Cir. 1982); *Trans-Canada Enter. v. Muckleshoot, etc.*, 634 F.2d 474, 476-77 (9th Cir. 1980).

The preemption standard that applies to questions of jurisdiction over tribes and Indian lands is a special one. A court must conduct "a particularized inquiry into the nature of the state, federal and tribal interests at stake . . . ." *White Mountain v. Bracker, supra*, 448 U.S. at 145. No express congressional statement of preemptive intent is required. "State jurisdiction is preempted by the operation of federal law if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the State interests at stake are sufficient to justify the assertion of State authority." *New Mexico v. Mescalero Apache Tribe, supra*, 76 L.Ed.2d at 620.

The Morongo-Naegele outdoor advertising agreement is part of a complex network of federal and tribal laws, all of which are designed to ensure that the Morongo Band can take advantage of its single most valuable asset, the reservation's suitability for outdoor advertising. Thus, the Band enacted an ordinance giving its business committee full authority to negotiate and execute agreements

for outdoor advertising on the Morongo reservation, and in 1977 the committee conducted negotiations with several outdoor advertising companies for the purpose of establishing an on-reservation outdoor advertising business. In 1978 the Band enacted its Land Use Ordinance #1, by which it designated the lands along Interstate 10 as suitable for commercial development. When, during the spring and summer of 1979, the State cited Naegele for claimed violations of the Outdoor Advertising Act, the Band forbade Naegele to obtain State outdoor advertising permits.

The Interior Department too has been extensively involved in facilitating and overseeing the Board's outdoor advertising enterprise. On December 13, 1979, the Interior Board of Indian Appeals ruled that the HBA does not apply to Indian reservations and directed the Area Director to effectuate a business lease for outdoor advertising. On February 2, 1984, the Acting Superintendent of the Southern California Agency of the BIA approved the Morongo-Naegele outdoor advertising agreement for a period of ten years, retroactive to the date of its execution (i.e., March 30, 1978). The approval did not state whether it was executed pursuant to the authority conferred by the Act of September 21, 1959, 73 Stat. 597 (codified as amended at 25 U.S.C. § 415) or 25 U.S.C. § 81 (Acts of March 3, 1871, ch. 120, § 3, 16 Stat. 570 and May 21, 1872, ch. 177, §§ 1 & 2, 17 Stat. 136, *amended by* Pub. L. 85-770 (1958)). However, both statutes require the approval of the Secretary of the Interior and bring into play a variety of federal requirements.

It is this complicated network of federal and tribal statutes, ordinances, regulations, administrative decisions

and policies which the Department would thrust aside so that it can control on-reservation outdoor advertising from outside the reservation. Obviously, allowing either exclusive or concurrent State jurisdiction would effectively nullify the Morongo Band's right to conduct and control outdoor advertising on its reservation. It would, in the words of this Court, "wholly . . . supplant tribal regulations" and allow the State "to dictate the terms on which non-members are permitted to utilize the reservation's resources." *New Mexico v. Mescalero Apache Tribe, supra*, 76 L.Ed.2d at 623. The Band would exercise authority over on-reservation outdoor advertising only at the sufferance of the State. *See id.*

State jurisdiction over the Morongo Band's on-reservation outdoor advertising would also strike at the heart of the Band's and the federal government's attempts to encourage tribal self government and economic development. It would strip the Band of the single means by which it could achieve the economic self-sufficiency which is the declared goal of current federal Indian policy. *See* 1 *American Indian Policy Review Commission: Final Report*, 3, 6, 8 & 13-21 (submitted to Congress on May 17, 1977); President Ronald Reagan's Indian Policy Statement of Jan. 24, 1984 (Appendix 4 hereto).

Against these federal and tribal interests must be weighed the State's claimed interest. This Court has stated that any exercise of state authority which imposes additional burdens on a tribal enterprise "must ordinarily be justified by functions or services performed by the State in connection with the on-reservation activity." *New Mexico v. Mescalero Apache Tribe, supra*, 76 L.Ed.2d at

622. The Department has never claimed that the State furnishes any on-reservation service that benefits the Band.

In an effort to substantiate its claimed interest in regulating on-reservation outdoor advertising, the Department argues that the freeway itself must be regarded as being off the reservation. This contention is mistaken, however. As this Court recently reaffirmed in *Solem v. Bartlett*, — U.S. —, 179 L.Ed.2d 443, 104 S.Ct. 1161 (1984), land remains "Indian country" as long as it lies within the boundaries of an Indian reservation. *See also Seymour v. Superintendent*, 368 U.S. 351, 358, 7 L.Ed.2d 346, 82 S.Ct. 351 (1982). Such is the case here.

The State's claimed aesthetic interest is disingenuous at best. If there is scenery which would be enhanced by the eradication of outdoor advertising, most of it is on the Morongo reservation, which lies on both sides of Interstate 10 and extends to the north all the way to the mountaintops which form the skyline. Must the Band suffer regulation by the State for the sake of the latter's claimed interest in the view afforded by the reservation?

Finally, it must at all times be remembered that the HBA itself states that "the Secretary [of Transportation]," *not the states*, has responsibility for implementing the Highway Beautification Act on federal lands. *See* 23 U.S.C. § 131(h). This itself strongly suggests that Congress regarded as negligible any claimed interest of the states in regulating outdoor advertising on *any* federal lands.

Naegele respectfully submits that there is a comprehensive tribal and federal scheme enabling and controlling the use of the Morongo Band's reservation for outdoor ad-

vertising, and that this scheme would be disrupted and its goals frustrated if California could enforce its outdoor advertising laws on the reservation. Further, the on-reservation enforcement of the California Outdoor Advertising Act would directly and seriously impair the right of the Band to regulate reservation land use. California therefore is preempted from exercising regulatory jurisdiction over outdoor advertising on the Morongo reservation, regardless of whether the California Supreme Court correctly held that the HBA also preempted the California Outdoor Advertising Act on traditional, non-balancing grounds.

4. The Morongo Band Of Indians Is An Indispensable Party That Cannot Be Joined, And Therefore This Action Should Be Dismissed.

As already indicated, the California Supreme Court refrained from ruling on Naegele's claim that the Morongo Band is an indispensable party that cannot be joined. Naegele again respectfully submits, however, that this action should now be dismissed for this reason.

California's Code of Civil Procedure Section 389 deals with joinder of parties and indispensable parties. In 1971 it was revised to conform substantially to Rule 19 of the Federal Rules of Civil Procedure. Code Civ. Proc. § 389, Law Revision Commission Comment, 1971 amendment. Like Rule 19, Section 389 sets forth a two-step procedure for determining (1) whether a party or entity not named as a defendant is a "necessary party," that is, one which should be "joined if feasible," and (2) if so, whether the action should be dismissed because the person not joined is an "indispensable party." C.C.P. § 389(a) & (b); *Vanoni v. County of Sonoma*, 40 Cal. App. 3d 743, 746-47, 115

Cal. Rptr. 485 (Ct. App. 1974); *cf. Bakia v. County of Los Angeles of State of Cal.*, 687 F.2d 299, 301 (9th Cir. 1982) (per curiam). Obviously, the Department of Transportation is requesting relief which, if granted, would entail serious adverse consequences to the Band, to wit, (1) the invalidation of the Morongo-Naegele lease agreement insofar as it purports to authorize signs that violate the California Outdoor Advertising Act, and (2) displacement of tribal regulatory jurisdiction.

Federal decisions construing Rule 19 of the Federal Rules of Civil Procedure have found the mere possibility of such adverse consequences sufficient to make an Indian tribe a "necessary party" within the meaning of Rule 19(a). In the following cases, the courts held that an unjoined Indian tribe was a *necessary* party because the action would have had the effect of invalidating a lease or other agreement to which the tribe was a party. *Manygoats v. Kleppe*, 558 F.2d 556, 558 (10th Cir. 1977); *Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1326 (9th Cir. 1975), *cert. denied sub nom., Susenkewa v. Kleppe*, 425 U.S. 903, 47 L.Ed.2d 752, 96 S.Ct. 1492 (1976); *Tewa Tesuque v. Morton*, 498 F.2d 240, 242 (10th Cir. 1974), *cert. denied*, 420 U.S. 962, 43 L.Ed.2d 440, 95 S.Ct. 1353 (1975); *National Indian Youth Council v. Andrus*, 501 F. Supp. 649, 681-82 (D.N.M. 1980), *aff'd sub nom., National Indian Youth Council v. Watt*, 644 F.2d 220 (10th Cir. 1981); *Yazzie v. Morton*, 59 F.R.D. 377, 383 (D. Ariz. 1973). An Indian tribe is also a necessary party to any action which would limit the scope of its sovereign rights (*Northern Cheyenne, etc. v. Adsit*, 668 F.2d 1080, 1089-90 (9th Cir. 1982), *rev'd on other grounds, Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 77 L.Ed.2d 837, 103 S.Ct., 3201 (1983)), including

the tribe's right to control its own reservation lands (*Yazzie v. Morton, supra*, 59 F.R.D. at 383).

Because the language and intent of Rule 19 and Section 389 are virtually the same, federal decisions construing the proper application of Rule 19 may appropriately be consulted in determining the proper application of Section 389. *Conrad v. Unemployment Ins. Appeals Bd.*, 47 Cal. App.3d 237, 241, 120 Cal. Rptr. 803 (Ct. App. 1975). The Band must therefore be regarded as a person who, pursuant to Section 389(a), "shall be joined as a party. . . ."

The Morongo Band cannot be joined, however. It is a fundamental tenet of American Indian Law that Indian tribes enjoy sovereign immunity from suit. They cannot be sued in either federal or state court unless Congress or the tribe consents to such suit. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58, 56 L.Ed.2d 106, 98 S.Ct. 1670 (1978).

The question remaining, therefore, is whether this action should have been allowed to proceed, in spite of the fact that the Band could not be joined. Like Subsection (b) of Rule 19, Section 389(b) sets forth four criteria to be considered in determining whether "in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable." *Cf. Bakia v. County of Los Angeles of State of Cal., supra*, 687 F.2d at 301. The four considerations are:

(1) The extent to which a judgment rendered without the absentee would prejudice it or the existing party;

(2) The extent to which prejudice can be alleviated or avoided by other measures;

(3) The adequacy of a judgment rendered without the absentee; and

(4) The adequacy of plaintiff's remedies if an action is dismissed for nonjoinder. Cal. Code Civ. Proc. § 389(b).

Here, the trial and appellate courts allowed a significant infringement of the Morongo Band's inherent sovereign rights, even though the Band was not a party to the action and could not be joined. This was error. Where, as here, the validity of an important tribal agreement with a non-Indian has been attacked, the courts have not hesitated to hold that the tribe was indispensable and, therefore, the action had to be dismissed. Each of *Lomayaktewa, Tewa Tesuque, National Indian Youth Council* and *Yazzie*, was an action to invalidate a lease between a tribe and a non-Indian, and in each the court held that the tribe was an indispensable party because, among other things, cancellation of the lease would severely prejudice the interests of the tribe. Validation of a lease is not, of course, the only kind of harm which requires that a tribe be deemed indispensable. *See Northern Cheyenne, etc. v. Adsit, supra*, 668 F.2d 1080 (action involving tribal water rights).

The first of the four factors enumerated in Subsection (b) of Section 389 therefore is clearly satisfied.

The second factor under Section 389(b) is the extent to which, by protective provisions in the judgment, preju-

dice to the absent party can be lessened or avoided. Here, that is not possible. As the decisions below illustrate, granting relief to the State deprives the Band of the right to determine the circumstances under which it will allow outdoor advertising on its reservation lands. The possibility of such prejudice cannot be eliminated. Therefore, dismissal is required. *See Lomayaktewa v. Hathaway, supra,* 520 F.2d at 1326.

The third factor under Section 389(b) is whether the judgment rendered in the person's absence will be adequate. Here, any judgment in the tribe's absence is for all intents and purposes unenforceable: Naegele neither owns the signs nor has authority to remove them without the consent of the Band. Further, the Band is not a party to the judgment in this action. The situation is exactly like that in *Lomayaktewa v. Hathaway, supra,* where the plaintiffs sued to invalidate a lease between the Hopi Tribe, as lessor, and a non-Indian corporation, as lessee, but did not name the tribe as a defendant. The Ninth Circuit considered it "perfectly apparent that any judgment rendered in the Tribe's absence would not be adequate." *Id.* at 1326.

The fourth factor is the adequacy of the plaintiff's remedies if the action is dismissed. Code Civ. Proc. § 389 (b). The plain fact of the matter is that the State has mounted an action which ought properly to have been brought against the Band, not Naegele. However, the plaintiffs are barred absolutely from suing the Band; they can no more sue the Band here than they could anywhere else. Therefore, there is no underlying enforceable right of action; dismissal effects no deprivation of a right.

The Department's entire action must be dismissed, because the Morongo Band is an indispensable party that cannot be joined.

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CONCLUSION

For the foregoing reasons, respondent Naegele respectfully requests that the Court deny the Department of Transportation's petition for writ of certiorari, or, alternatively, that the Court remand the action with directions to dismiss for failure to join an indispensable party that cannot be joined.

Dated: November 7, 1985.

Respectfully submitted,

BEST, BEST & KRIEGER
Attorneys at Law

By: RICHARD CROSS, ESQ.

Attorneys for Respondent Naegele Outdoor Advertising Company of California, Inc.

APPENDIX 1

ADMINISTRATIVE APPEAL OF
THE MORONGO BAND OF MISSION INDIANS

v.

AREA DIRECTOR, SACRAMENTO AREA OFFICE

7 IBIA 299

Decided *December 13, 1979*

Appeal from Area Director's decision disapproving a proposed lease of trust land for outdoor advertising purposes.

Reversed.

1. Act of Oct. 22, 1965—Bureau of Indian Affairs: Generally—Indian Tribes: Generally

Title I of the Highway Beautification Act, 79 Stat. 1028, which applies to all "public lands reservations of the United States," does not apply to Indian Reservations.

2. Act. of Aug. 15, 1953—Indian Tribes: Generally

Public Law 280, 67 Stat. 588-590, did not grant to states general civil regulatory powers over Indian reservations. Nor could this be accomplished by Departmental regulation. Secretarial Order or other directive.

3. Act of Oct. 22, 1965—Bureau of Indian Affairs: Generally—Indian Tribes: Generally

California's Outdoor Advertising Act, implementing the Highway Beautification Act, 79 Stat. 1028, may not be applied to non-Indian lessees on the Morongo Indian Reservation.

4. Act of Oct. 22, 1965—Bureau of Indian Affairs: Generally—Indian Tribes: Generally

The Department's policy established in 1965 of requiring lessees of Indian lands in California to comply with State standards regulating land use and development can be achieved without subjecting developing tribal governments to the full enforcement powers of the State, viz, through adding appropriate State standards to the provisions of any lease.

APPEARANCES: Stephen V. Quesenberry, Esq., California Indian Legal Services, for appellant; James E. Goodhue, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Riverside, California, for respondent.

OPINION BY CHIEF
ADMINISTRATIVE JUDGE HORTON
INTERIOR BOARD OF INDIAN APPEALS

The appeal decided here involves a claim by the Morongo Band of Mission Indians (appellant) that the Area Director, Bureau of Indian Affairs, Sacramento Area Office (respondent), erred in refusing to approve a lease agreement between the Band and the Naegele Outdoor Advertising Co., Inc., of California, for the purpose of erecting and maintaining outdoor advertising structures on the Morongo Indian Reservation.

The Area Director's decision at issue was rendered Mar. 14, 1978.[1] A notice of appeal was timely filed from this decision by California Indian Legal Services on behalf of appellant on Apr 17, 1978, pursuant to 25 CFR Part 2. By memorandum dated Mar. 27, 1979. Acting Deputy Com-

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[1]The Area Director's decision affirmed a determination made by the Superintendent, Southern California Agency, BIA, dated Aug. 29, 1977.

missioner of Indian Affairs Martin E. Seneca, Jr., referred this appeal to the Board of Indian Appeals for resolution in accordance with the provisions of 25 CFR 2.19.[2]

In reviewing the decision appealed from and the briefs submitted by the parties, it is clear that resolution of this appeal depends primarily on the answer to the following question: To what extent, if any, does the Highway Beautification Act of 1965, 79 Stat. 1028, 23 U.S.C. § 131 (1976), apply to Indian reservations?

BACKGROUND

The genesis of this appeal can be traced to the struggle of the Morongo Band of Mission Indians to develop economically. This background is detailed in appellant's brief dated July 1, 1978, from which the following summary is adduced:

The Morongo Indian Reservation occupies approximately 32,300 acres of land in Riverside County, California, and is inhabited by nearly 300 members of the Morongo Band of Mission Indians. Because the reservation lies astride a narrow pass between the San Bernardino and San Jacinto Mountain Ranges, only the few rela-

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[2]This regulation provides in relevant part:

"(a) Within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs shall:

"(1) Render a written decision on the appeal or

"(2) Refer the appeal to the Board of Indian Appeals for decision.

"(b) If no action is taken by the Commissioner within the 30-day time limit, the Board of Indian Appeals shall review and render the final decision."

tively flat acres located in the plain are suitable for economic development. A planning study conducted for the Band in 1972 identified a total of less than 1 square mile of reservation land as suitable for economic development. All of that land lies adjacent to Interstate Highway 10, which is a major east-west artery for travel to and from the metropolitan areas of southern California.

In addition to the Interstate Highway, the reservation is crossed by a main line of the Southern Pacific Railroad, the Colorado River Aqueduct, major oil tranmission [*sic*] pipelines, national gas pipelines, and numerous electrical transmission lines, all of which serve the metropolitan Los Angeles area without any significant benefit to the reservation or its residents.

Despite the reservation's seemingly advantageous location for economic developments, its economy is depressed and its population poor. The unemployment rate on the reservation is approximately 50 percent.

For many years a major source of income for the Morongo Band has been derived from outdoor advertising activities on tribal lands adjacent to Interstate Highway 10.[3] Because the foregoing lands consist of property held in trust by the United States for the benefit of the Morongo Band, any tribal lease of the property for business purposes requires approval by the Secretary of the Interior pursuant to the provisions of 25 U.S.C. § 415 (1976), and regulations found in 25 CFR Part 131. The Bureau has

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[3]In an appraisal report dated Oct. 13, 1977, the Southern California Appraisal Office, BIA, identified outdoor advertising as "the highest and best use of reservation land along Interstate 10."

refused to approve the Morongo Band's advertising lease with the Naegele company on grounds that the outdoor advertising proposed in the lease violates requirements of the Highway Beautification Act and California State law promulgated thereunder.[4]

DISCUSSION, FINDINGS AND CONCLUSIONS

Certain preliminary questions are answered before we address the main issue. First, the Field Solicitor (who represents the Area Director on appeal) asserts that it is inappropriate for the Board to entertain this appeal because the issues involved are the subject of litigation in *State of California v. Naegele Outdoor Advertising Co. of California, Inc.*, No. 126069, Superior Court of the State of California, County of Riverside. This is an action brought by the State of California, through its Department of Transportation, against the Naegele company for violations of California's Outdoor Advertising Act, Bus. & Prof. Code §§ 5200-5486, allegedly committed by the company in advertising activities on the Morongo Reservation.

There are indeed questions of law at issue in the foregoing case which also arise in this administrative proceeding, such as whether the Congress intended the Highway Beautification Act to apply to Indian reservations. The precise issue in the State Court proceeding, however,

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[4]The Area Director's decision does not recite specific findings of fact or conclusions of law. In lieu thereof, the Area Director states:

"In view of the Riverside Field Solicitor's Opinion: Secretarial Order of July 9, 1965, 30 F.R. 8722: Solicitor's Opinion dated April 7, 1967, and circumstances surrounding the lease proposal of Naegele Outdoor Advertising Company, I hereby affirm the Superintendent's decision of Aug. 29, 1977."

does not involve the lease dispute now before the Board. In this regard, neither the Morongo Band nor the Department of the Interior is a party to the action. In the absence of any court injunction or Secretarial directive precluding the Board from deciding the subject appeal, there is no legal reason why the Board cannot do so. Further, considerations of policy do not favor the continuation of disputes which are ripe for decision. Here, appellant has been pursuing a final administrative determination from the Department for over 1½ years. For the above reasons, the Board rejects respondent's contention that consideration of this appeal should be deferred or denied.[5]

Subsequent to the Area Director's disapproval of the lease at issue, the Morongo Band entered into an "agency agreement" with the Naegele Company in March, 1978. This agency agreement is explained by appellant in its brief dated July 1, 1978, as follows:

During the pendency of these various appeals, the Business Committee of the Morongo Band, pursuant to the authority vested in it through the Band's enactment of Proposition 4 at its General Election of December 14, 1963, continued to consider the possibility of establishing an outdoor advertising industry on the Morongo Indian Reservation because of its potential for creating employment for Band members and for creating an income for the Morongo Band. After lengthy deliberations, it was decided that the most advantageous and expeditious way for the Band to

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[5]The Field Solicitor refers to another California suit. *State of California v. Hadley Fruit Co.*, Civ. No. 106415, Superior Court of California, County of Riverside, as one with a direct bearing on the issues before the Board. Appellant disagrees. The Board is informed that the above case has been settled.

do so would be for the Band to establish its own outdoor advertising enterprise immediately. Because the Band lacked the necessary technical expertise to do so immediately, the Band engaged an agent to commence and to operate certain aspects of this enterprise for the Band during a period when the Band would acquire its own expertise in the business. The Band has entered into an Agency Agreement with its agent [Naegele Outdoor Advertising Company of California, Inc.] for this purpose.

The Field Solicitor submits that appellant is "attempting to convert the appeal from the refusal to approve the lease into an Interior Board of Indian Appeals' ratification of an agency agreement [summarized above] and the Band's operation of an outdoor advertising sign business." Answer Brief filed June 4, 1979, at 2. Appellant denies this charge and maintains that Departmental ratification of the Band's agency agreement with the company is not required. Appellant's Reply Brief filed June 22, 1979, at 1-2.

It is neither necessary nor appropriate for the Board to render an opinion regarding the March 1978 "agency agreement." The Board's jurisdiction in administrative appeals is limited to a review of specific action taken by BIA officials in the performance of their duties under Chapter I of Title 25 of the *Code of Federal Regulations*, 43 CFR 4.350-4.353. To our knowledge, no BIA action has been taken regarding the agency agreement.[6] If some

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[6]According to the Field Solicitor, "at no time was the so-called agency agreement ever presented to the Superintendent, Southern California Agency, or the Area Director for approval." Answer Brief at 2.

BIA action has occurred regarding the agreement, it is not reviewable by this forum in the absence of a proper appeal therefrom.

Thus, the sole question to be decided here is whether it was error for the Area Director to disapprove the proposed lease of trust land on the Morongo Indian Reservation to the Naegele company.[7]

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[7]The terms of the proposed lease are set forth in a letter to the Morongo Band Tribal Council from the Naegele Company, dated Aug. 10, 1977, which reads as follows:

"Gentlemen:

"Confirming our meeting and proposal to the Morongo Tribal Council on Aug. 8, 1977, we would like to propose the following for your approval.

"1. We would like to lease the North side of sections 10 and 12 and the South side of section 8 located on Freeway Interstate 10. We will only lease enough ground space to erect single pole signs. Each advertising structure will only have one pole with the ground base approximately thirty six inches in diameter.

"2. At this time, our plans call for fifteen different single pole structures, spaced approximately 1000 ft. apart. As we understand, your sections are one mile long on the freeway side. This will allow us to build five on each of the proposed sections.

"3. In order for Naegele to lease the above mentioned property, the Morongo Indians will have to own the poles for each advertising structure. Naegele will furnish and erect each pole and sell them to the Morongos for one dollar each. We can then lease the top of the pole for a total of $6,500 per year plus the annual increase as outlined on the attached page. At the end of our lease agreement we will buy back the poles for one dollar each or enter into a new lease at the agreement of both parties.

"4. The annual payment of $6,500 plus, will be made in annual installments in advance beginning Jan. 1, 1978. The

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The statutory authority which permits the leasing of Indian trust land for such business purposes as outdoor ad-

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payment schedule above will be established by the fact that we will have approval to start construction on the locations by October 1, 1977.

"5. In the event of future development of Morongo property, we will move our structure, including the pole fifty or one hundred feet or wherever it will not interfere with the development. This will be done at no cost to the Morongo Indians.

"6. The Hadley outdoor advertising signs can remain as far as we are concerned. But all other advertising signs will be removed by us as their leases expire with you. The reason for this is, we do not want to create outdoor advertising clutter. We would like to have an exclusive right to lease any and all property that you want to lease for advertising on any road or freeway. This will also allow you to expect and get prompt payment from one advertising company, the 3rd largest outdoor advertising company in the United States.

"7. In the event the state finds a way or passes a law to prevent Naegele from leasing the top of each of your single poles through condemnation or whatever, we will pay you the lease money owed through the day we are forced to take down our signs and poles.

"8. Naegele will maintain all advertising structures, including the poles at no cost to the Morongos. We will also assume all cost for illumination and service for the signs. Naegele will also carry all insurance for liability. We will at all times protect the interest of the Morongo Indians.

"9. We will only build standardized outdoor structures, 14′ x 48′ with space for extensions, please see photo, or we will not exceed 1,200 sq. ft., which will meet state approval.

"10. We will also need the right of ingress and egress of the premises to erect, place and maintain all advertising signs and structures and any equipment therefore and post, paint or illuminate and maintain advertisements or such structures.

Very Truly Yours

Leon E. Howell
President"

vertising is the Act of Aug. 9, 1955, 69 Stat. 539, *as amended*, 25 U.S.C. § 415 (1976). The Act provides that restricted Indian lands, whether tribally or individually owned, may be leased only with the approval of the Secretary of the Interior. In addition to prescribing the term of years for leases consummated under the Act, the statute provides:

> Prior to approval of any lease * * * the Secretary of the Interior shall first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject. [Act of June 2, 1970, § 2, 84 Stat. 303.]

The Department's regulations governing the leasing of Indian land are set forth in 25 CFR Part 131. These regulations are primarily aimed at insuring proper economic return to Indian lessors. *See* 25 CFR 131.5.

Based on the authorities incorporated by reference in the Area Director's decision (*see* n.4, it appears that the Area Director disapproved the proposed lease on grounds that California and Federal laws controlling outdoor advertising along Interstate Highways were not satisfied by the provisions of the lease.

On appeal the Morongo Band has presented a comprehensive attack on the validity of the Area Director's action. Among other things, the Band alleges the following:

1. The Highway Beautification Act does not apply to Indian reservation lands.

2. Neither the Highway Beautification Act, Public Law 280, or any other proper legal authority confers on California power to implement its Outdoor Advertising Act on Indian reservations.

3. The Highway Beautification Act and the California Outdoor Advertising Act do not apply to non-Indian lessees of Indian trust lands.

4. The policy of the Secretary of the Interior to apply state land use standards to leases of Indian trust lands can be accomplished without subjecting the Band to state jurisdiction and enforcement measures.

DOES THE HIGHWAY BEAUTIFICATION ACT APPLY TO INDIAN RESERVATION LANDS?

The Highway Beautification Act of 1965, *as amended*, was enacted by Congress to provide for scenic development and road beautification of the Federal-aid highway systems. Title I of the Act (23 U.S.C. § 131 (1976) contains requirements for the control of outdoor advertising. At 23 U.S.C. § 131(h), the Act provdes:

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary [in 1965, the Secretary of Commerce; now the Secretary of Transportation].

[1] In a memorandum opinion to the Commissioner of Indian Affairs dated Apr. 7, 1967, the Associate Solici-

tor for Indian Affairs concluded that "reservations of the United States" as used in subsec. (h) of 23 U.S.C. § 131 includes Indian reservation.[8] Upon careful review, we conclude that the Associate Solicitor's opinion does not reflect the state of the law on this subject.

The 1967 opinion relies primarily on the Department's disposition of three cases rendered over 65 years ago concerning rights-of-way across "reservations" for canal and ditch purposes.[9] At issue was whether the term "reservations" as used in the Act of Mar. 3, 1891, § 18, 26 Stat. 1101, 43 U.S.C. § 946 (1976), includes Indian reservations. The Department ruled in the affirmative and this position was followed by a Federal court in 1914. *United States v. Portneuf-Marsh Valley Irr. Co.*, 205 F. 416 (E.D. Ida. 1913), *aff'd*, 213 F.601 (9th Cir. 1914).

As appellant argues on appeal, the Act of Mar. 3, 1891, vests power in the Secretary of the Interior to disapprove a right-of-way grant whenever he determines that approval thereof would be injurious to an Indian reservation.[10] On

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[8]In his concluding paragraph, the Associate Solicitor states that outdoor advertising on Indian reservation lands is subject "to regulations under the act." The opinion does not address whether outdoor advertising on Indian reservations is subject to both Federal and state regulation.

[9]27 L.D. 421 (1898), overruling 14 L.D. 265 (1892); 33 L.D. 568 (1905); and 42 L.D. 595 (1913).

[10]The statutory proviso reads in pertinent part: *"Provided.* That no such right of way shall be so located as to interfere with the proper occupation by the Government of any such reservation." 43 U.S.C. § 946 (1976). With respect thereto, see 27 L.D. 421, 423-424, 33 L.D. 563, 565 and 42 L.D. 595, 600, *supra*. In *U.S. v. Portneuf-Marsh Valley Irr. Co., supra*, the Federal district court stated:

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the other hand, the Highway Beautification Act of 1965, which relies on state action to enforce its standards, *see* 23 U.S.C. § 131(b)—(k) (1976), contains on special protection for Indian interests.

One indication that the Department has not considered the Highway Beautification Act applicable to Indian lands is its own regulatory response to the statute. In December 1970, the Secretary issued regulations invoking and expanding the outdoor advertising standards of the Highway Beautification Act with respect to public lands managed by the Bureau of Land Management, 43 CFR 2921.0-6. No such regulations have been issued by the Secretary with respect to Indian lands.

That the Highway Beautification Act was not intended to apply to Indian reservations is apparent from the enforcement provisions of the law. Under the Act, states are subject to a 10 percent reduction in Federal highway funds if they fail to regulate outdoor advertising in accordance with national standards. 23 U.S.C. § 131(b). States are authorized to employ their zoning or condemnation powers to achieve compliance with the Act. Sec. 131 (d)-131(g); 23 CFR 750.301-308. States may even impose stricter limitations than are found in the Act in controlling outdoor advertising. Sec. 131(k); 23 CFR 750.110, 750.155.

For the above measures to be taken by states on Indian reservations two well-established legal principles are

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"It is pointed out that there is no apparent reason why an Indian reservation should not be subject to the grant of a right of way the same as any other reservation, especially in view of the fact that the Executive Department having jurisdiction thereof may determine whether a right of way can be granted without injury to the general purpose of the reservation, and extend or withhold approval accordingly." 205 F. 416, 419.

necessarily forsaken; first, that tribally owned Indian reservation land is not subject to state powers of eminent domain. *Minnesota v. United States,* 305 U.S. 382 (1939); *United States v. 10.69 Acres of Land,* 425 F.2d 317 (9th Cir. 1970),[11] and second, that states are not authorized to enforce their land use regulations on Indian reservations. *Santa Rosa Band of Indians v. Kings County,* 532 F.2d 605 (9th Cir. 1975. *cert. denied,* 429 U.S. 1038 (1977).

Unquestionably, the Congress which has plenary authority over Indian affairs, *United States v. Kagama,* 118 U.S. 375 (1886), has the power to subject Indian reservations to the type of state regulation generally authorized in the Highway Beautification Act. However, based on principles enunciated by the Supreme Court in *Williams v. Lee,* 358 U.S. 217 (1959), regarding the limits of state power over Indian affairs, it is the Board's position that absent clear Congressional license to the states to control outdoor advertising on Indian reservations, such an intrusion by the states into "the right of reservation Indians to make their own laws and be ruled by them" is without sanction.

The term "reservation" is one broadly used "to describe any body of land, large or small, which Congress has reserved from sale of any purpose." *United States v. Celestine,* 215 U.S. 278 (1909). It may include military reservations, national forests, national parks, or any other Federally protected reserve.[12] Indian reservations are

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[11]Allotted lands are subject to state condemnation. Act of Mar. 3, 1901, 31 Stat. 1084, 25 U.S.C. § 257 (1976).

[12]In concluding that the phrase "public lands and reservations of the United States" as found in the Act of Mar. 3, 1891,

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unique, however, since vital rights are vested in the Indians and tribes located thereon. Appellant refers to the Buck Act.[13] as a clear example of Congressional recognition that Indian reservations are distinguishable from all other Federal reservations. As originally proposed, this Act would have allowed a state to impose its sales tax, use tax or income tax within "Federal areas," alternatively described as Federal "reservations" in the title of the bill. A series of inquiries from the Department of the Interior eventually led to a clarifying provision in the bill excepting reservation Indians from the coverage of the Buck Act.[14]

In the case before us, absence of statutory language expressly including or excluding Indian reservations as territory subject to the Highway Beautification Act renders the term "reservations" as used in sec. 131h), ambiguous. This ambiguity has been recognized by the Department of Transportation, the Federal agency primarily responsible for national enforcement of the Act. By memorandum dated Dec. 19, 1977, an assitant [*sic*] chief counsel of the Federal Highway Administration furnished the Department of the Interior with a draft proposed amendment to 23 U.S.C. § 131(h) aimed at bringing Indian reservation areas within certain coverages of the Highway Beautification Act.[15]

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included Indian reservations, the Appeals Court noted in *United States v. Portneuf-Marsh Valley Irr. Co., supra,* that "[a]t the date of that act the Indian reservations were the only considerable reservations of the United States." 213 F. 601, 603.

[13]Act of July 30, 1947, 61 Stat. 641, 4 U.S.C. §§ 104-110 (1976).

[14]4 U.S.C. § 100 (1976). See Appellant's opening brief filed July 5, 1978, at 4-7.

[15]See pp. 41-46, Appellant's Attachments to Brief on Appeal, filed July 5, 1978. Among other things, the draft amendment called for a voluntary removal program on Indian reservation lands of nonconforming outdoor advertising signs.

To our knowledge, the legislative history of 25 U.S.C. § 131 (1976) reveals no reference to Indian reservations whatsoever. However, implicit in statements of the House Public Works Committee regarding the legislation is the recurring theme that enforcement of the Act could effectively be achieved through the zoning and condemnation powers enjoyed by states. House Report No. 1084, 89th Congress, 1st Sess., found in 1965 *U.S. Code Cong. & Adm. News*, pp. 3710-3736.[16] As previously stated, however, we believe these powers may be exercised by states on Indian reservations only when Congress expressly so authorizes. Under the circumstances, we find that the legislative history of the Highway Beautification Act supports the conclusion that Congress did not intend to include Indian reservations within the class of reservations affected thereby.

In ascertaining this intent of Congress, it is instructive that Indian lands are specifically identified in other Acts relating to the Federal-aid highway systems as appropriate. *See* 23 U.S.C. §§ 101(a), 103(b)(1), 120(a), 120(f), 120(g), 125(c), 203, 208, and 217(c). Congress obviously knew when and how to include language relating to Indian reservations in its Federal highway plan.

Appellant submits that in accordance with recognized canons of construction, doubtful statutory language must be interpreted in favor of the Indians. This is undoubtedly

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[16]The regulations of the Federal Highway Administration concerning condemnation under the Act specify that they "should not be construed to authorize any additional rights in eminent domain not already existing under State law or under 23 U.S.C. 131(g)." 23 CFR 750.301.

true with respect to Federal statutes dealing with Indians. *Worcester v. Georgia,* 31 U.S. (6 Peters) 214, 261 (1832); *Santa Rosa Band of Indians v. Kings County, supra; State of Washington v. Confederated Bands and Tribes of the Yakima Indian Nation,* — U.S. —, 58 L.Ed.2d 740, 758 (1979). Where the Federal statute involved is one of general applicability, such as the Highway Beautification Act, some courts are prone to apply normal rules of construction instead of rules which favor Indians. *See United States v. Allard,* 397 F. Supp. 429 (D. Mont. 1975); *cf. United States v. White,* 508 F.2d 453 (8th Cir. 1974).

In this case, it cannot be said that Indians are similarly affected as the general public if sec. 131(h) is deemed applicable to Indian reservations. Such a ruling would significantly alter the tribal sovereignty possessed by Indian nations. Since states have the authority under the Act to impose standards stricter than in the Act itself, such a ruling could mean economic termination of a tribe such as the Morongo Band whose primary source of income is derived from outdoor advertising. Because of the unique tribal interests at stake here, it is not inappropriate to apply the rules of construction urged by appellant, notwithstanding the general nature of the Act in question. So doing, we are all the more satisfied that Congress did not intend the Highway Beautification Act to apply to Indian reservations.

PUBLIC LAW 280 AND DEPARTMENTAL STANDARDS

[2] The Field Solicitor submits that the California Outdoor Advertising Act may be enforced on Indian reservations by virtue of a Secretarial Order of July 2, 1965,

published at 30 FR 8722. This directive (signed by Under Secretary John A. Carver) provides in part:

> Pursuant to § 1.4(b), Title 25, Code of Federal Regulations (30 F.R. 7520), the Secretary of the Interior does hereby adopt and make applicable, subject to the conditions hereinafter provided, all of the laws, ordinances, codes, resolutions, rules or other regulations of the State of California, now existing or as they may be amended or enacted in the future, limiting, zoning, or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States and located within the State of California.

The Field Solicitor points out that the above Secretarial directive has been construed by a California court as vesting the State with authority to apply its laws to lessees of Indian lands. *County of San Bernardino v. LaMar*, 76 Cal Rptr. 547 (1969).

In a March 1970 opinion, former Secretary of the Interior Walter J. Hickel clarified the Department's position with respect to the 1965 Secretarial directive and expressly stated that the Department had no intention of following the ruling in *County of San Bernardino, supra,* noting that the United States was not a party to the litigation and had no notice of its pendency,[17] Secretary Hickel stated that, a

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[17]Mr. Hickel's opinion appears as appendix A to Appellants' Supplemental State in Support of Appeal, filed May 3, 1979. It is an unpublished opinion directed to interested parties in the zoning of lands of the Agua Caliente Indian Reservation in Palm Springs.

most, California laws were noticed by the Department as standards for the agency to follow in approving leases of Indian land.

The Secretarial directive of 1965 and 25 CFR 1.4(b) are apparent attempts of the Department to apply or interpret the aims of Congress in its enactment of the Act of Aug. 15, 1953, 67 Stat. 558-590, *a amended,* commonly known as Public Law 280.[18] In 1976, the Supreme Court rendered the definitive decision that Public Law 280 did not grant to states general civil regulatory powers over Indian reservations. *Bryan v. Itasca County,* 426 U.S. 373, 390 (1976). The Court's decision in *Bryan* is consistent with Mr. Hickel's 1970 opinion that the Secretarial directive of 1965 was not a general jurisdictional grant to California to apply its regulatory laws in Indian country. Clearly, only Congress may accomplish such a result.

The Field Solicitor further contends that the California Outdoor Advertising Act is a prohibitory statute and thus comes within the purview of the criminal jurisdiction provisions of Public Law 280. It is the case that California has made any violation of its Act a misdemeanor. *Bus. and Prof. Code,* § 5464.

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[18]The 1965 order contains the following proviso: "Nothing contained in this notice shall be construed in any way to alter or limit the provisions of sections 2(b) and 4(b) and (c) of the Act of August 15, 1953 (67 Stat. 589)." Several commentators have questioned the validity of 25 CFR 1.4 (see, *Public Law 280: The Limits of State Jurisdiction Over Reservation Indians,* 22 U.C.L.A. L. Rev. 535, 586 (1975), by Goldberg. *Regulating Sovereignty: Secretarial Discretion and the Leasing of Indian Lands,* 26 Stan. L. Rev. 1061, 1091 (1974), by Chambers. In *Norvell v. Sangre de Cristo Dev. Co.,* 372 F. Supp. 348 (D.N.M. 1974), 25 CFR 1.4 was declared unconstitutional for lack of congressional authorization.

Appellant submits that under the above theory virtually any state licensing or regulatory law could be converted to a "criminal" law by merely providing that violation thereof constitutes a criminal offense. We agree with appellant that Indian reservations would obviously be subject to wholesale regulation by state legislatures under the above interpretation. Dictum in the Ninth Circuit's decision in *United States v. Marcyes,* 557 F.2d 1361, 1364, (9th Cir. 1977) indicates that such a procedure cannot be countenanced. We so hold here on the basis that the California Outdoor Advertising Act is clearly a regulatory law and does not fall within the criminal jurisdiction provisions of Public Law 280.

REGULATION OF NON-INDIAN LESSEES

[3] The most difficult question in this appeal is whether the proposed lease with the Naegele company would be subject to state regulation if approved by the Department because of the non-Indian character of the enterprise. If so, the Bureau of Indian Affairs should possibly not be faulted for disapproving the lease if it fails to satisfy certain requirements of California's Outdoor Advertising Act.

In *Fort Mojave Tribe v. County of San Bernardino,* 543 F.2d 1253 (9th Cir. 1976), the Appeals Court reaffirmed its earlier holding in *Agua Caliente Band of Mission Indians v. County of Riverside,* 442 F.2d 1184 (9th Cir. 1971), *cert. denied,* 405 U.S. 933 (1972), that a state possessory interest tax could be imposed on non-Indian lessees of Indian trust land. The Board has carefully evaluated the foregoing decisions and related cases. In our opinion, appellant has correctly distinguished the case at hand from those where courts have permitted state regulation of non-Indian lessees on Indian reservations:

> However, *Fort Mojave* and *Agua Caliente* are distinguishable from the situation of the Morongo Band on at least two basic points. First, different state statutes are involved which, if enforced against the non-Indian lessee, will have varying degrees of impact on tribal self-government. Assessment of a possessory interest tax on the leasehold interest of a non-Indian lessee is qualitatively different from enforcement of a land use statute (California Outdoor Advertising Act against the same lessee. Second, a corollary of the first point, is the fact that assessment of a possessory interest tax is not an attempt by the State to exercise "general civil regulatory powers" [*Bryan, supra,* 426 U.S. at 390] over reservation lands.
>
> State laws regulating outdoor advertising, like other state zoning and land use laws, full within *Bryan's* prohibition against the exercise of general state civil regulatory authority on Indian reservations, absent an express grant of such authority from Congress. Moreover, the assessment of a possessory interest tax on the non-Indian lessee, unlike the regulation of outdoor advertising, is not a regulation of the use of the land and results in less of an intrusion into the areas of retained tribal sovereignty and tribal self-government. [Footnote omitted.]

Appellant's Reply Brief, filed June 20, 1979, at 18.

That the effect of state regulation on tribal sovereignty bears on the validity of a state's jurisdiction is explained in *Williams v. Lee, supra,* and *Moe v. Confederated Salish and Kootenai Tribes,* 425 U.S. 463 (1976).

Here, we find the Morongo Band has made a persuasive showing, one which by proper accounts should have been attempted by its trustee,[19] that its self-government

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[19]Under the authority of the Mission Indian Relief Act of Jan. 12, 1891, 26 Stat. 712, the United States issued a patent on

(Continued on following page)

would be adversely affected by application of California's Outdoor Advertising Act to its non-Indian lessee.[20]

EXERCISE OF SECRETARY'S AUTHORITY

[4] Appellant observes that the Department's policy "to require lessees of Indian lands to comply with state *standards* regulating land use and development" as expressed in Secretary Hickel's 1970 opinion, "can be implemented without taking the drastic step of subjecting developing tribal governments to the full enforcement powers of the state." Appellant's Reply Brief at 20. The Band suggests that a reasonable approach would be to include State standards regarding placement, illumination, maintenance, etc., of outdoor advertising structures as provisions of any lease. The Board believes this to be a sound proposal. In undertaking this approach, however, the Bureau of Indian Affairs must insure that its own actions serve to protect tribal sovereignty.[21] This can be party [*sic*] accomplished by initially acquiring the Band's consent to the use of State standards.[22]

(Continued from previous page)

Dec. 14, 1908, declaring that it would hold the lands of the Morongo Indian Reservation "in trust for the sole use and benefit of the said Morongo Band or Village of Indians."

[20]"[T]ribal use and development of tribal property presently is one of the main vehicles for the economic self-development necessary to equal Indian participation in American life." *Santa Rosa Band of Indians v. Kings County, supra* at 684; *see also, Bryan, supra,* 428 U.S. 388, n. 14.

[21]That this duty is incumbent on the Bureau of Indian Affairs in acting on proposed leases of Indian lands is addressed in Mr. Chambers' article cited in n. 18.

[22]This procedure is desirable to bring the Secretarial directive of 1965 into compliance with the 1968 amendments of Public Law 280 regarding tribal consent. Act of Apr. 11, 1968,

(Continued on following page)

DISPOSITION

In accordance with the above discussion, findings and conclusions, the decision of the Sacramento Area Director dated Mar. 14, 1978, disapproving the proposed lease between the Morongo Band and the Naegele company is vacated. This matter is remanded to the Acting Deputy Commissioner of Indian Affairs with instructions that the Bureau of Indian Affairs seek to effectuate a business lease for outdoor advertising between the Morongo Band and the Naegele Company consistent with this opinion.

In accordance with the authority delegated the Board under 43 CFR 4.1, this decision is final for the Department.

WM. PHILIP HORTON,
Chief Administrative Judge.

WE CONCUR:

FRANKLIN ARNESS,
Administrative Judge.
MITCHELL J. SABAGH,
Administrative Judge.

(Continued from previous page)

82 Stat. 78-80, 25 U.S.C. §§ 1321-22 (1976). Tribal consent should not be a problem in this case. The Morongo Band has suggested the use of State law as a standard for regulating outdoor advertising on its reservation, and, in addition, the Band has repeatedly expressed its commitment to the general purposes of the Highway Beautification Act. See Appellant's Brief filed May 3, 1979, at 4; Appellant's Brief filed June 24, 1979, at 18-10.

APPENDIX 2

Approved for a period of 10 years retroactive to the execution of the Agency Agreement on March 30, 1978 as entered into by Thomas Lyons, Chairman, Morongo Band of Mission Indians and Leon E. Howell, President, Naegele Outdoor Advertising Company of California, Inc.

This document is executed pursuant to Sacramento Area Office Redelegation of Authority Order No. 1, July 3, 1978, which specifies under Section 2.3, that the Superintendent may exercise the authority of the Area Director in relation to the following: (f) all those matters set forth in 25 CFR 131 (now 162), except for leases and permits with terms in excess of ten (10) years. Therefore, the Acting Superintendent, Southern California Agency, herein exercises the redelegated authority. If the original agreement is unavailable, the Southern California Agency will prepare an approval page for attachment to the copy, with appropriate references to that certain agreement entered into by the parties on March 30, 1978.

Where references are made to the Band as to approvals, consents and authorizations, the words "and the Secretary" will be added after Band.

Approved in accordance with the letter of the Area Director, Sacramento Area Office, dated November 15, 1983, a copy of which by this reference is made a part hereof. See Exhibit "A".

Approved February 2, 1984 reactive [*sic*] to March 30, 1978.

/s/ William H. Gianelli
Acting Superintendent
Pursuant to the authority delegated by
209 DM 8, 10 BIAM 3.1, and Sacramento
Area Office Redelegation Order No. 1
(43 F.R. 30131).

APPENDIX 3

EXHIBIT "A"

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Sacramento Area Office
2800 Cottage Way
Sacramento, California 95825

(SEAL)

November 15, 1983

Barbara E. Karshmer, Esq.
Attorney at Law
925 N Street, Suite 150
Fresno, California 93721-2256

Dear Ms. Karshmer:

This refers to your letter of October 27, 1983, concerning an Agency Agreement between the Morongo Band of Mission Indians and Naegele Outdoor Advertising Company. The matter was the subject of a decision from the Interior Board of Indian Appeals which held that a contemplated lease of certain lands on the Morongo Indian Reservation for outdoor advertising purposes would not be regulated by State law or the Highway Beautification Act.

Your letter requests that the Bureau of Indian Affairs seek to "effectuate a business lease for outdoor advertising between the Morongo Band and the Naegele Company", as directed by the Interior Board of Indian Appeals, in the approval of the agency agreement executed between the Band and Naegele, on March 30, 1978. You further requested that said approval be issued retroactively to March 30, 1978, in view of the Interior Board of Indian Appeals' decision and in order that the Band may attempt to per-

suade the Ninth Circuit Court of Appeals to remand the case of U.S. *ex rel Buxbom v. Naegele,* to the District Court for a new decision in light of the changed facts.

Sacramento Area Office Redelegation of Authority Order No. 1, July 3, 1978, specifies under Sec. 2.3, that the Superintendents and the Director, Palm Springs Office, may exercise the authority of the Area Director in relation to the following: (f) all those matters set forth in 25 CFR 131 (now 162), except for leases and permits with terms in excess of ten (10) years. Therefore, the Superintendent, Southern California Agency, by copy of this letter, is requested to exercise his redelegated authority with respect to your request. You are requested to provide the Superintendents, with the original agreement, if at all possible. If the original agreement is unavailable, the Southern California Agency will prepare an approval page for attachment to the copy, with appropriate references to that certain agreement entered —into by —the parties on March 30, 1978.

It is suggested that where references are made to the Band as to approvals, consents and authorizations, that "and the Secretary" be added after Band.

Sincerely,

/s/ Jess T. Town
Area Director

cc: Superintendent, SCA, w/copy of incoming for action.

APPENDIX 4

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release January 24, 1983

STATEMENT BY THE PRESIDENT

INDIAN POLICY

This Administration believes that responsibilities and resources should be restored to the governments which are closest to the people served. This philosophy applies not only to state and local governments, but also to federally recognized American Indian tribes.

When European colonial powers began to explore and colonize this land, they entered into treaties with sovereign Indian nations. Our new nation continued to make treaties and to deal with Indian tribes on a government-to-government basis. Throughout our history, despite periods of conflict and shifting national policies in Indian affairs; the government-to-government relationship between the United States and Indian tribes has endured. The Constitution, treaties, laws, and court decisions have consistently recognized a unique political relationship between Indian tribes and the United States which this Administration pledges to uphold.

In 1970, President Nixon announced a national policy of self-determination for Indian tribes. At the heart of the new policy was a commitment by the federal government to foster and encourage tribal self-government. That commitment was signed into law in 1975 as the Indian Self-Determination and Education Assistance Act.

The principle of self-government set forth in this Act was a good starting point. However, since 1975, there has

been more rhetoric than action. Instead of fostering and encouraging self-government, federal policies have by and large inhibited the political and economic development of the tribes. Excessive regulation and self-perpetuating bureaucracy have stifled local decisionmaking, thwarted Indian control of Indian resources, and promoted dependency rather than self-sufficiency.

This Administration intends to reverse this trend by removing the obstacles to self-government and by creating a more favorable environment for the development of healthy reservation economies. Tribal governments, the federal government, and the private sector will all have a role. This Administration will take a flexible approach which recognizes the diversity among tribes and the right of each tribe to set its own priorities and goals. Change will not happen overnight. Development will be charted by the tribes, not the federal government.

This Administration honors the commitment this nation made in 1970 and 1975 to strengthen tribal governments and lessen federal control over tribal governmental affairs. This Administration is determined to turn these goals into reality. Our policy is to reaffirm dealing with Indian tribes on a government-to-government basis and to pursue the policy of self-government for Indian tribes without threatening termination.

In support of our policy, we shall continue to fulfill the federal trust responsibility for the physical and financial resources we hold in trust for the tribes and their members. The fulfillment of this unique responsibility will be accomplished in accordance with the highest standards.

Tribal Self-Government

Tribal governments, like state and local governments, are more aware of the needs and desires of their citizens than is the federal government and should, therefore, have the primary responsibility for meeting those needs. The only effective way for Indian reservations to develop is through tribal governments which are responsive and accountable to their members.

Early in this nation's dealings with Indian tribes, federal employees began to perform Indian tribal government functions. Despite the Indian Self-Determination Act, major tribal government functions — enforcing tribal laws, developing and managing tribal resources, providing health and social services, educating children — are frequently still carried on by federal employees. The federal government must move away from this surrogate role which undermines the concept of self-government.

It is important to the concept of self-government that tribes reduce their dependence on federal funds by providing a greater percentage of the cost of their self-government. Some tribes are already moving in this direction. This Administration pledges to assist tribes in strengthening their governments by removing the federal impediments to tribal self-government and tribal resource development. Necessary federal funds will continue to be available. This Administration affirms the right to tribes to determine the best way to meet the needs of their members and to establish and run programs which best meet those needs.

For those small tribes which have the greatest need to develop core governmental capacities, this Administration

has developed, through the Assistant Secretary of the Interior for Indian Affairs, the Small Tribes Initiative. This program will provide financial support necessary to allow these tribes to develop basic tribal administrative and management capabilities.

In keeping with the government-to-government relationship, Indian tribes are defined by law as eligible entities and receive direct funding, if they wish, in five block grant programs administered by the Department of Health and Human Services. These and other blocks to the states consolidated dozens of categorical federal domestic assistance programs to reduce fragmentation and overlap, eliminate excessive federal regulation, and provide for more local control. This Administration now proposes that Indian tribes be eligible for direct funding in the Title XX social services block, the block with the largest appropriation and the greatest flexibility in service delivery.

In addition, we are moving the White House liaison for federally-recognized tribes from the Office of Public Liaison to the Office of Intergovernmental Affairs, which maintains liaison with state and local governments. In the past several administrations, tribes have been placed along with vital interest groups, such as veterans, businessmen and religious leaders. In moving the tribal government contact within the White House Intergovernmental Affairs staff, this Administration is underscoring its commitment to recognizing tribal governments on a government-to-government basis.

Further, we are recommending that the Congress expand the authorized membership of the Advisory Commission on Intergovernmental Relations (42 U.S.C. 4273) to include a representative of Indian tribal governments. In the interim before Congressional action, we are requesting that the Assistant Secretary for Indian Affairs join the Commission as an observer. We also supported and signed into law the Indian Tribal Governmental Tax Status Act which provides tribal governments with essentially the same treatment under federal tax laws as applies to other governments with regard to revenue raising and saving mechanisms.

In addition, this Administration calls upon Congress to replace House Concurrent Resolution 108 of the 83rd Congress, the resolution which established the now discredited policy of terminating the federal-tribal relationship. Congress has implicitly rejected the termination policy by enacting the Indian Self-Determination and Education Assistance Act of 1975. However, because the termination policy declared in H. Con. Res. 108 has not been expressly and formally repudiated by a concurrent resolution of Congress, it continues to create among the Indian people an apprehension that the United States may not in the future honor the unique relationship between the Indian people and the federal government. A lingering threat of termination has no place in this Administration's policy of self-government for Indian tribes, and I ask Congress to again express its support of self-government.

These actions are but the first steps in restoring control to tribal governments. Much more needs to be done. Without sound reservation economies, the concept of self-

government has little meaning. In the past, despite good intentions, the federal government has been one of the major obstacles to economic progress. This Administration intends to remove the impediments to economic development and to encourage cooperative efforts among the tribes, the federal government and the private sector in developing reservation economies.

Development of Reservation Economies

The economies of American Indian reservations are extremely depressed with unemployment rates among the highest in the country. Indian leaders have told this Administration that the development of reservation economies is their number one priority. Growing economies provide jobs, promote self-sufficiency, and provide revenue for essential services. Past attempts to stimulate growth have been fragmented and largely ineffective. As a result, involvement of private industry has been limited, with only infrequent success. Developing reservation economies offers a special challenge: devising investment procedures consistent with the trust status; removing legal barriers which restrict the type of contracts tribes can enter into and reducing the numerous and complex regulations which hinder economic growth.

Tribes have had limited opportunities to invest in their own economies because often there has been no established resource base for community investment and development. Many reservations lack a developed physical infrastructure including utilities, transportation and other public services. They also often lack the regulatory, adjudicatory and enforcement mechanisms necessary to interact with the private sector for reservation economic devel-

opment on the reservation offers potential for tribes and individual entrepreneurs in manufacturing, agribusiness and modern technology, as well as fishing, livestock, arts and crafts and other traditional livelihoods.

Natural resources such as timber, fishing and energy provide an avenue of development for many tribes. Tribal governments have the responsibility to determine the extent and the methods of developing the tribe's natural resources. The federal government's responsibility should not be used to hinder tribes from taking advantage of economic development opportunities.

With regard to energy resources, both the Indian tribes and the nation stand to gain from the prudent development and management of the vast coal, oil, gas, uranium and other resources found on Indian lands. As already demonstrated by a number of tribes, these resources can become the foundation for economic development on many reservations while lessening our nation's dependence on imported oil. The federal role is to encourage the production of energy resources in ways consistent with Indian values and priorities. To that end, we have strongly supported the use of creative agreements such as joint ventures and other non-lease agreements for the development of Indian mineral resources.

It is the free market which will supply the bulk of the capital investments required to develop tribal energy and other resources. A fundamental prerequisite to economic development is capital formation. The establishment of a financial structure that is a part of the Indian reservation community is essential to the development of Indian capital formation.

Federal support will be made available to tribes to assist them in developing the necessary management capability and in attracting private capital. As a first step in that direction, we provided funds in the FY 1983 budget to provide seed money to tribes to attract private funding for economic development ventures on reservations. As more tribes develop their capital resource base and increase their managerial expertise, they will have an opportunity to realize the maximum return on their investments and will be able to share an increasing portion of the business risk.

It is the policy of this Administration to encourage private involvement, both Indian and non-Indian, in tribal economic development. In some cases, tribes and the private sector have already taken innovative approaches which have overcome the legislative and regulatory impediments to economic progress.

Since tribal governments have the primary responsibility for meeting the basic needs of Indian communities, they must be allowed the chance to succeed. This Administration, therefore, is establishing a Presidential Advisory Commission on Indian Reservation Economies. The Commission, composed of tribal and private sector leaders, is to identify obstacles to economic growth in the public and private sector at all levels; examine and recommend changes in federal law, regulations and procedures to remove such obstacles; identify actions state, local and tribal governments could take to rectify identified problems; and recommend ways for the private sector, both Indian and non-Indian, to participate in the development and growth of reservation economies. It is also to be charged with the

responsibility for advising the President on recommended actions required to create a positive environment for the development and growth of reservation economies.

Numerous federal agencies can offer specialized assistance and expertise to the tribes not only in economic development, but also in housing, health, education, job training, and other areas which are an integral part of reservation economies. It is to the advantage of the tribes, and in the interest of the taxpayers, that the federal role be fully reviewed and coordinated. Therefore, this Administration directs the Cabinet Council on Human Resources to act as a mechanism to ensure that federal activities are non-duplicative, cost effective, and consistent with the goal of encouraging self-government with a minimum of federal interference.

Summary

This Administration intends to restore tribal governments to their rightful place among the governments of this nation and to enable tribal governments, along with state and local governments, to resume control over their own affairs.

This Administration has sought suggestions from Indian leaders in forming the policies which we have announced. We intend to continue this dialogue with the tribes as these policies are implemented.

The governmental and economic reforms proposed for the benefit of Indian tribes and their members cannot be achieved in a vacuum.

This nation's economic health—and that of the tribes—depends on adopting this Administration's full Economic

Recovery Program. This program calls for eliminating excessive federal spending and taxes, removing burdensome regulations, and establishing a sound monetary policy. A full economic recovery will unleash the potential strength of the private sector and ensure a vigorous economic climate for development which will benefit not only Indian people, but all other Americans as well.

REAGAN ADMINISTRATION INDIAN POLICY INITIATIVES

— Request that Congress repudiate House Concurrent Resolution 108 of the 83rd Congress which called for termination of the federal-tribal relationship. The Administration wants this lingering threat of termination replaced by a resolution expressing its support of a government-to-government relationship.

— Ask Congress to expand the authorized membership of the Advisory Commission on Intergovernmental Relations to include a representative of Indian tribal governments. In the interim, request that the Assistant Secretary of the Interior for Indian Affairs join the ACIR as an observer.

— Move the White House liaison for federally-recognized tribes from the Office of Public Liaison to the Office of Intergovernmental Affairs.

— Establish a Presidential Advisory Commission on Indian Reservation Economies to identify obstacles to economic growth and recommend changes at all levels; recommend ways to encourage private sector involvement, and advise the President what actions are needed to create a positive environment for the development and growth of reservation economies.

— Support direct funding to Indian tribes under the Title XX social services block grant to states.

— Sought and obtained funds for FY 1983 to implement the Small Tribes Initiative to provide financial support needed to allow small tribes to develop basic tribal administrative and management capabilities.

— Sought and obtained funds for FY 1983 to provide seed money for tribes for economic development ventures on reservations.

— Supported and signed into law the Tribal Governmental Tax Status Act which will provide tribal governments with the same revenue raising and saving mechanisms available to other governments.

— Support the use of creative agreements such as joint ventures and other non-lease agreements for the development of Indian mineral resources.

— Direct the Cabinet Council on Human Resources to act as a review and coordination mechanism to ensure that federal activities are non-duplicative, cost effective and consistent with the goal of encouraging tribal self-government with a minimum of federal interference.